

2. On November 29, 2005, HipSaver served Posey with a second request for production of documents (the "Request"). Posey served its written response (the "Response") to the Request on the day it was due, i.e., January 3, 2006. In the Response, Posey objected to the Request on the grounds that, among other things, it was untimely. Posey also interposed substantive objections to the individual document categories described in the Request.

3. On January 16, 2006, HipSaver served Posey with a document entitled "Plaintiff HipSaver's Designation of Expert Witnesses". A true and correct copy of the document is attached as Exhibit "A". At the time HipSaver served its expert designation, it did not serve any expert reports. Nor did it ask the Court to extend its time to serve expert reports.

4. On January 26, 2006, Posey's counsel wrote to HipSaver's counsel a letter, a true and correct copy of which is attached as Exhibit "B".

5. On January 31, 2006, I participated in a telephone conference with counsel for HipSaver regarding HipSaver's failure to produce any expert reports. Afterwards, I wrote a letter to HipSaver's counsel, Edward Dailey. A true and correct copy of my letter is attached as Exhibit "C". I believe that Exhibit "C" correctly summarizes the content of that telephone conference.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed this 24th day of March 2006 at Pasadena, California.

/s/ Douglas H. Morseburg
Douglas H. Morseburg

EXHIBIT "A"

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Civil Action No. 05-10917 PBS

The HipSaver Company, Inc.,)	
)	
Plaintiff,)	
)	
v)	
)	
J.T. Posey Company,)	
)	
Defendant)	
)	
<hr style="border: 0.5px solid black;"/>		
)	
J.T. Posey Company, Inc.,)	
)	
Counterclaim Plaintiff)	
)	
v)	
)	
The HipSaver Company, Inc. and)	
Edward L. Goodwin,)	
)	
Counterclaim Defendants)	
)	
)	
)	
<hr style="border: 0.5px solid black;"/>		

PLAINTIFF HIPSAVER'S DESIGNATION OF EXPERT WITNESSES

Plaintiff, HipSaver, designates the following proposed expert witnesses:

Wilson C. Hayes, Ph.D.

Corvallis, Oregon

Mechanical engineering, biomechanical engineering, injury biomechanics,
anatomy, orthopedics, exercise and sports science

Melvin S. Coons, B.S. Chemical Engineering

Columbus, Ohio

Chemical engineering

Roy J. Epstein, Ph.D.

Belmont, Massachusetts

Marketplace and business damages

THE HIPSAVER COMPANY, INC.

By its Attorneys,

/s/ Courtney M. Quish

Lee Carl Bromberg, BBO No.: 058480

Edward J. Dailey, BBO No.: 112220

Courtney M. Quish, BBO No.: 662288

BROMBERG SUNSTEIN LLP

125 Summer Street - 11th floor

Boston, Massachusetts 02110-1618

(617) 443-9292

(617) 443-0004 (fax)

cquish@bromsun.com

Dated: January 16, 2006

02820/00502 460097.1

CERTIFICATE OF SERVICE

I certify that this document has been filed through the Electronic Case Filing System of the United States District Court for the District of Massachusetts and will be served electronically by the court to the Registered Participants identified in the Notice of Electronic filing.

January 16, 2006

EXHIBIT "B"

SHELDON & MAK

A PROFESSIONAL CORPORATION

ATTORNEYS

CORPORATE CENTER

225 SOUTH LAKE AVENUE, 9TH FLOOR

PASADENA, CALIFORNIA 91101-3021

FACSIMILE: (626) 795-6321

HOME PAGE: www.usip.com

(626) 796-4000

OTHER CALIFORNIA OFFICES:

RIVERSIDE
UPLAND

LES J WEINSTEIN
SENIOR COUNSEL

WRITER'S DIRECT NUMBER
626.356.1217

WRITER'S EMAIL
DOUG@USIP.COM

JEFFREY G. SHELDON
DANTON K. MAK
DENTON L. ANDERSON
DAVID A. FARAH, M.D.
DOUGLAS H. MORSEBURG
ROBERT J. ROSE
WILLIAM J. BRUTOCASO
DANIEL J. COPLAN
KRISTIN C. HIBNER, PH.D.
MARC KARISH
MICHAEL F. FEDRICK
SHANNON S. SHELDON
A. ERIC BJORGUM
NORMAN VAN TREECK

January 26, 2006

Via PDF and U.S. Mail

Edward J. Dailey, Esq.
Courtney Quish, Esq.
Bromberg Sunstein LLP
125 Summer Street
Boston, Massachusetts 02110-1618

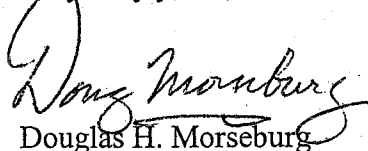
Re: HipSaver v. Posey and Related Counterclaim
Sheldon & Mak Matter No. 16112.24

Dear Ed and Courtney:

We have received your expert designations in the above matter, but we have not received any expert reports. We cannot do expert discovery without them. Please let us know when we can expect to receive them. Needless to say, if we do not receive them, we will seek an order excluding expert testimony.

On a related note, in response to Courtney's inquiry, we cannot agree that communications between counsel and testifying experts are privileged. All such communications are subject to discovery.

Very truly yours,


Douglas H. Morseburg

DHM:cs

cc: Jeff Sheldon

EXHIBIT "C"

Doug Morseburg

From: Doug Morseburg
Sent: Tuesday, January 31, 2006 7:47 PM
To: 'Edward Dailey'
Cc: Cassandra Scardino; Doug Morseburg; Don Piper
Subject: RE: HipSaver v JT Posey - Expert Designations

Dear Ed:

Please let this confirm our telephone conversation of this afternoon during which we discussed expert designations and reports in the above matter.

As I told you, our position is that you were required to provide us with expert designations and expert reports simultaneously. This is consistent with Federal Rule of Civil Procedure 26(a)(2) which provides that, unless the parties stipulate or the Court orders otherwise, a party must simultaneously disclose the identities of its/his/her expert witnesses and produce copies of any expert reports. In this case, the Court has not directed that expert reports be served separately from expert designations and we have not stipulated otherwise, so the provisions of the rule apply.

During our discussion, you contended that a reasonable reading of the Court's scheduling order is that expert designations would be followed by the production of expert reports within a reasonable time afterwards. You also contended that, even if you were required to produce expert reports and your expert designation simultaneously, your experts were unable to produce reports because Posey had not produced various documents.

As for these arguments, I do not think the scheduling order is susceptible of your interpretation. Even if it were, however, the only documents you contend Posey has not produced are financial documents. Surely, you cannot contend that your technical experts needed Posey's financial documents in order to prepare their expert reports. In addition, as I have previously said, since your last request for production was not timely served, Posey's production of financial documents at this point is purely voluntary. (As an aside, Posey's financial documents will be sent to you tomorrow morning via pdf with a copy by U.S. Mail.)

At this point, your expert reports are about two weeks late and there is no way to conduct expert discovery without them. As a consequence, in the event you submit reports for your expert witnesses at a later date, we intend to move to strike them.

Please let me know if you have any questions.

Sincerely,

Doug Morseburg

-----Original Message-----

From: Edward Dailey [mailto:Edailey@bromsun.com]
Sent: Monday, January 30, 2006 2:13 PM
To: Doug Morseburg
Subject: RE: HipSaver v JT Posey

I will call you Tuesday at 2pm (surfer time).
/Ed

Ed Dailey
BROMBERG SUNSTEIN LLP
Winning Intellectual Property
125 Summer Street

Boston 02110-1618
617.443.9292
617.443.0004 (fax)
617.852.7110 (cell)
edailey@bromsun.com
www.bromsun.com

-----Original Message-----

From: Doug Morseburg [mailto:doug@usip.com]
Sent: Monday, January 30, 2006 4:53 PM
To: Edward Dailey
Cc: Cassandra Scardino; Don Piper
Subject: RE: HipSaver v JT Posey

That would be S.T.

-----Original Message-----

From: Edward Dailey [mailto:Edailey@bromsun.com]
Sent: Monday, January 30, 2006 12:36 PM
To: Doug Morseburg
Cc: Cassandra Scardino; Don Piper
Subject: RE: HipSaver v JT Posey

2pm Tuesday - eastern time or surfer time?

/Ed

Ed Dailey
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617.852.7110 (cell)
edailey@bromsun.com
www.bromsun.com

-----Original Message-----

From: Doug Morseburg [mailto:doug@usip.com]
Sent: Monday, January 30, 2006 2:30 PM
To: Edward Dailey
Cc: Cassandra Scardino; Don Piper; Doug Morseburg
Subject: RE: HipSaver v JT Posey

Dear Ed:

Re meeting and conferring as to expert discovery, I am not available today, but I am available tomorrow. 2:00 p.m. would be fine.

Sincerely,

Doug

-----Original Message-----

From: Edward Dailey [mailto:Edailey@bromsun.com]
Sent: Friday, January 27, 2006 1:12 PM
To: Doug Morseburg; Jeff Sheldon; ajfitzpatrick@duanemorris.com
Subject: HipSaver v JT Posey

Please see enclosed letter.

/Ed

Ed Dailey
BROMBERG SUNSTEIN LLP
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125 Summer Street
Boston 02110-1618
617.443.9292
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edailey@bromsun.com
www.bromsun.com

-----Original Message-----

From: EDWARD DAILEY [mailto:Edailey@bromsun.com]
Sent: Friday, January 27, 2006 4:10 PM
To: Edward Dailey
Subject: Scanned Document

Please open the attached document. This document was digitally sent to you using the HP 9200C Digital Sender on the 11th floor.

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